

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

JEFFREY L. SIMMONS,

Plaintiff,

v.

Civil Action No. 2:08-CV-65
(Senior Judge Maxwell)

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

**REPORT AND RECOMMENDATION RECOMMENDING PLAINTIFF'S MOTION TO
DISMISS BE GRANTED**

On May 14, 2008, Jeffrey L. Simmons filed a complaint for review of Defendant's denial of his application for Social Security benefits pursuant to 42 U.S.C. § 405(g). On December 4, 2008, the Undersigned recommended the complaint be dismissed for failure to pay the filing fee. Thereafter, on December 24, 2008, Plaintiff filed a motion asking that his case be dismissed without prejudice.

The Court RECOMMENDS that Plaintiff's Motion to Dismiss without prejudice be GRANTED.

Any party who appears *pro se* and any counsel of record, as applicable, may, within ten (10) days after being served with a copy of this Report and Recommendation, file with the Clerk of the Court written objections identifying the portions of the Report and Recommendation to which objection is made, and the basis for such objection. A copy of such objections should be submitted to the District Court Judge of Record. Failure to timely file objections to the Report and Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Report and Recommendation.

The Clerk of the Court is directed to provide a copy of this Report and Recommendation to parties who appear *pro se* and all counsel of record, as applicable, as provided in the Administrative Procedures for Electronic Case Filing in the United States District Court for the Northern District of West Virginia.

DATED: December 29, 2008

/s/ James E. Seibert
JAMES E. SEIBERT
UNITED STATES MAGISTRATE JUDGE